

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
Application for Authority to Construct) IHF-C/P-20200427-00001
an International Broadcast Station)

INFORMAL OBJECTION

This informal objection is filed pursuant to Section §73.3587 of Commission Rules, by Shortwave Solutions LLC (“Objector”) regarding an Application for Authority to construct an International Broadcast Station (“Application”) by Parable Broadcasting Company, LLC (“Parable”).

Note is made to the informal objection filed by “High Frequency Parties” (“Previous Objection”) to the same application, and of reply by Parable (“Reply”).

Objector’s argument follows:

- 1) Part 73 Subpart F (“International Broadcast”) only allows transmissions to the general public
- 2) Parable has burden of proof of “public interest”, and Commission can inquire whether Parable’s transmissions are to the general public

International Broadcast

It is well-established that “broadcasting” only includes transmissions intended to, and received by, the general public. Any other use constitutes “ancillary” or “auxiliary” service. Examples follow.

§73.701(a) defines “*International broadcast station*” as “[...] transmissions of which are intended to be received directly by the general public in foreign countries”.

In a R&O¹ related to ancillary services to be provided by TV broadcasters, “*The Commission has determined that the definition of “broadcasting” in the Act applies to services intended to be received by an indiscriminate public and has identified three indicia of a lack of such intent: (1) the service is not receivable on conventional television sets and requires a licensee or programmer-provided special antennae and/or signal converter so the signal can be received in the home; (2) the programming is encrypted in a way that “makes it unusable by the public” and that is not “enjoyable without the aid of decoders”; and (3) the provider and the viewer are engaged in a private contractual relationship*”. Substituting television for radio, this clearly applies here: Parable submitted no evidence how the data it plans to transmit can be decoded by the general public, without use of special equipment. Nor it submits any evidence as to kind of data it intends to transmit.

Parable admits² that there are no rules that define “ancillary” or “auxiliary” services in Subpart F. and relies solely on the “datacasting” explicitly permitted §73.758 to support its non-broadcast use. However, it is not the case: This paragraph was added in *Report and Order, FCC 05-70*, in ET Docket 04-139. Review of this docket shows that it was intended to harmonize FCC Rules with decisions of

¹ FCC 17-158 §9

² Reply at p. 2

WRC-03 conference, such as digital modulation in HF bands. In this docket, only the final R&O mentions “datacasting” in any way, and the §73 of final R&O states: “*We also observe that there is a datacasting standard for DRM, which will permit FCC-licensed international broadcasters to offer wide-area datacasting as well as high quality audio broadcasting*”. Parable appears to read this as a permission to offer non-broadcast, “private, point-to-point” services over the HF broadcast bands.

Certainly, if the Commission has intended to permit non-broadcast use, it would have stated so in a far more explicit manner (as it has done in every other case), such as altering “Table of Frequency Allocations” (§2.106) where such use was permitted, for example:

- *NG5 In the band 535-1705 kHz, AM broadcast licensees and permittees may use their AM carrier on a secondary basis to transmit signals intended for both broadcast and non-broadcast purposes. In the band 88-108 MHz, FM broadcast licensees and permittees are permitted to use subcarriers on a secondary basis to transmit signals intended for both broadcast and non-broadcast purposes. In the bands 54-72, 76-88, 174-216, 470-608, and 614-698 MHz, TV broadcast licensees and permittees are permitted to use subcarriers on a secondary basis for both broadcast and non-broadcast purposes.*
- *NG14 TV broadcast stations authorized to operate in the bands 54-72, 76-88, 174-216, 470-608, and 614-698 MHz may use a portion of the television vertical blanking interval for the transmission of telecommunications signals [..]*
- *NG149 The bands 54-72 MHz, 76-88 MHz, 174-216 MHz, 470-512 MHz, 512-608 MHz, and 614-698 MHz are also allocated to the fixed service to permit subscription television operations in accordance with 47 CFR part 73 [..]*

In other examples, Commission explicitly added rules to allow to “*offer services of any nature [..] on an ancillary or supplemental basis [..] Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary*” in DTV broadcast rules (§2.106).

In other words, “datacasting” permits arbitrary data, yet it still has to have the three indicia of “broadcast” identified in R&O above: non-proprietary decoder, unencrypted and not require contractual relationship.

Burden of Proof and Further Inquiry

Certainly, if the “datacast” provided by the third parties is, in fact, intended for the general public, it is not an impediment to a broadcast license. However, in its Reply, Parable avoided affirmatively stating what kind of data it is transmitting, and whether it can or cannot be decoded. Parable claims that the Previous Objection “*fails to state any facts delaying grant of the Application*”, and that is insufficient to infer non-broadcast use by being located in the same area and having antennas pointed at same direction as other competitors looking to transmit private data from Chicago to Europe³. Perhaps so, perhaps not.

However, it should be noted that the burden of proof of “public interest” is on Parable - and is not satisfied by “*completing that application in full*”⁴.

³ See, for example, <https://sniperinmahwah.wordpress.com/2018/05/07/shortwave-trading-part-i-the-west-chicago-tower-mystery/>

⁴ Reply, at p. 2

Parable attempts to make the Commission decide the Application on the record in front of it, with only two options, to grant or deny. Objector notes another option: as “data” is provided by a third parties⁵, Commission does have an authority under §73.3613(d) to request “*time sales contracts with the same sponsor for 4 or more hours per day*”. While it is noted that Parable did not explicitly state whether it will be paid for “datacast”, the Reply makes it clear that such “datacast” is crucial to its business model, and Commission can make an appropriate inference.

Objector hereby discloses affiliation with one of Part 5 applicants for experimental license for similar services, and as such, affiliation with a competitor of Parable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alex Pilosov'.

Alex Pilosov
Shortwave Solutions LLC

⁵ Application, Exhibit IV-1